

Item SPR06-01 Response Form

Title: Appellate Procedure: Appeals in Felony Cases (amend Cal. Rules of Court, rules 30 and 30.1)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

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| DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006 |
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee
All comments will become part of the public record of the council's action.*

Invitations to Comment (Proposal SPR06-01)

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|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title | Appellate Procedure: Appeals in Felony Cases (amend Cal. Rules of Court, rules 30 and 30.1) |
| Summary | This proposal would amend rule 30 to clarify the definition of a felony case in light of recent caselaw. It would also amend rule 30.1 to establish the time within which a cross-appeal must be filed in a felony case. |
| Source | Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair |
| Staff | Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov |
| Discussion | <p>Rule 30 establishes the requirements for notices of appeal in felony cases. Among other things, based on the definition in Penal Code section 691(f), this rule defines a “felony case” as a criminal action in which a felony is “charged.” In a recent case, <i>People v. Nickerson</i> (2005) 128 Cal.App.4th 33, the Court of Appeal clarified when a felony is considered “charged” under Penal Code section 691, and thus under rule 30. The court held that a felony is not charged until an information or indictment is filed or a complaint is certified to the superior court under Penal Code section 859a. This amendment would incorporate into rule 30 a definition of “charged” that is based on the holding in the <i>Nickerson</i> case.</p> <p>Rule 30.1 establishes the time within which a notice of appeal must be filed in a felony case. Currently, neither rule 30.1 nor any of the other rules relating to felony appeals specify the time within which a cross-appeal may be filed. This amendment would incorporate into rule 30.1 a new provision regarding cross-appeals in felony cases, similar to the provision now applicable to civil appeals under rule 3(e). Under this new provision, however, if the defendant or the People file an appeal, any other party would have 30 days from the filing of that first notice of appeal to file a cross-appeal, rather than 20 days as is provided for cross-appeals in civil cases. The additional 10 days is intended to address delays associated with prison mail.</p> |
| | Attachment |

Rules 30 and 30.1 of the California Rules of Court would be amended, effective January 1, 2007, to read:

Rule 30. Taking the appeal

(a) Notice of appeal

- (1) To appeal from a judgment or an appealable order of the superior court in a felony case—other than a judgment imposing a sentence of death—the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).
- (2) As used in (1), “felony case” means any criminal action in which a felony is charged, regardless of the outcome. A felony is “charged” when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a. ~~It~~ A felony case includes an action in which the defendant is charged with:
 - (A) A felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;
 - (B) A felony, but is convicted of only a lesser offense; or
 - (C) An offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).
- (3) If the defendant appeals, the defendant or the defendant’s attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.
- (4) The notice of appeal must be liberally construed. Except as provided in (b), the notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

1 **(b) Appeal after plea of guilty or nolo contendere or after admission of**
2 **probation violation**

- 3
- 4 (1) Except as provided in (4), to appeal from a superior court judgment after
5 a plea of guilty or nolo contendere or after an admission of probation
6 violation, the defendant must file in that superior court—in addition to the
7 notice of appeal required by (a)—the statement required by Penal Code
8 section 1237.5 for issuance of a certificate of probable cause.
9
- 10 (2) Within 20 days after the defendant files a statement under (1), the
11 superior court must sign and file either a certificate of probable cause or
12 an order denying the certificate.
13
- 14 (3) If the defendant does not file the statement required by (1) or if the
15 superior court denies a certificate of probable cause, the superior court
16 clerk must mark the notice of appeal “Inoperative,” notify the defendant,
17 and send a copy of the marked notice of appeal to the district appellate
18 project.
19
- 20 (4) The defendant need not comply with (1) if the notice of appeal states that
21 the appeal is based on:
22
- 23 (A) The denial of a motion to suppress evidence under Penal Code
24 section 1538.5;; or
25
- 26 (B) Grounds that arose after entry of the plea and do not affect the plea’s
27 validity.
28
- 29 (5) If the defendant’s notice of appeal contains a statement under (4), the
30 reviewing court will not consider any issue affecting the validity of the
31 plea unless the defendant also complies with (1).
32

33 **(c) Notification of the appeal**
34

- 35 (1) When a notice of appeal is filed, the superior court clerk must promptly
36 mail a notification of the filing to the attorney of record for each party, to
37 any unrepresented defendant, to the reviewing court clerk, to each court
38 reporter, and to any primary reporter or reporting supervisor. If the
39 defendant also files a statement under (b)(1), the clerk must not mail the
40 notification unless the superior court files a certificate under (b)(2).
41

- 1 (2) The notification must show the date it was mailed, the number and title of
2 the case, and the dates the notice of appeal and any certificate under
3 (b)(2) were filed. If the information is available, the notification must also
4 include:
5
6 (A) The name, address, telephone number, and California State Bar
7 number of each attorney of record in the case;
8
9 (B) The name of the party each attorney represented in the superior
10 court; and
11
12 (C) The name, address, and telephone number of any unrepresented
13 defendant.
14
15 (3) The notification to the reviewing court clerk must also include a copy of
16 the notice of appeal, any certificate filed under (b), and the sequential list
17 of reporters made under rule 980.4.
18
19 (4) A copy of the notice of appeal is sufficient notification under (1) if the
20 required information is on the copy or is added by the superior court
21 clerk.
22
23 (5) The mailing of a notification under (1) is a sufficient performance of the
24 clerk's duty despite the discharge, disqualification, suspension,
25 disbarment, or death of the attorney.
26
27 (6) Failure to comply with any provision of this subdivision does not affect
28 the validity of the notice of appeal.
29

30 **Rule 30.1. Time to appeal**

31 32 **(a) Normal time**

33
34 ~~Unless~~ Except as provided in (b) or as otherwise provided by law, a notice of
35 appeal must be filed within 60 days after the rendition of the judgment or the
36 making of the order being appealed. Except as provided in rule 45.1, no court
37 may extend the time to file a notice of appeal.
38

39 **(b) Cross-appeal**

40
41 If the defendant or the People timely appeals from a judgment or appealable
42 order, the time for any other party to appeal from the same judgment or order is

1 extended until 30 days after the superior court clerk mails notification of the
2 first appeal.

3
4 **~~(b)~~ (c) Premature notice of appeal**

5
6 A notice of appeal filed before the judgment is rendered or the order is made is
7 premature, but the reviewing court may treat the notice as filed immediately
8 after the rendition of judgment or the making of the order.
9

10 **~~(e)~~ (d) Late notice of appeal**

11
12 The superior court clerk must mark a late notice of appeal “Received [date] but
13 not filed,” notify the party that the notice was not filed because it was late, and
14 send a copy of the marked notice of appeal to the district appellate project.
15

16 **~~(d)~~ (e) Receipt by mail from custodial institution**

17
18 If the superior court clerk receives a notice of appeal by mail from a custodial
19 institution after the period specified in (a) has expired but the envelope shows
20 that the notice was mailed or delivered to custodial officials for mailing within
21 the period specified in (a), the notice is deemed timely. The clerk must retain in
22 the case file the envelope in which the notice was received.